86-18

Supreme Court, U.S.
FILED
JUN 25 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

(Rev.) ALAN J. STANG,

Petitioner,

v.

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA,

Respondent.

UNITED STATES OF AMERICA,
Real Party in Interest.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

(Rev.) Alan J. Stang
8385 Mandarin Ave.
Alta Loma, California 91701
(714) 980-3165

Petitioner In Propria Persona

QUESTIONS PRESENTED FOR REVIEW

1. Whether an individual summoned before a U.S District Court to face criminal charges based upon an unverified information, and whom has appeared In Propria Persona, without the aid or benefit of counsel, and whom has timely and consistently demanded a probable cause hearing, and whom has consistently been denied a probable cause hearing against his will and over his objections, and whom has refused to enter a plea because he does not understand the nature of the charges, is being denied substantial rights secured by Amendment IV, and Amendment V to the United States Constitution, and Rules 3, 4, and 5 Federal Rules of Criminal Procedure?

2. Whether an individual summoned before a U.S District Court to face criminal charges based upon an unverified information, and whom has consistently been denied a probable cause hearing, and no apparent probable cause exists, and whom has been

placed upon a quasi probation by court order ordering the individual not to leave the courts geographical jurisdiction area without the courts permission, and also requiring the individual to make frequent reports to the pre-trial services officer, deprives the individual of a substantial Liberty interest without due process of the law as secured by Amendment V to the United States Constitution?

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The petitioner (Rev.) Alan J. Stang, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered on June 9, 1986.

OPINION BELOW

The Court of Appeals entered its denial of petitioners petition for writ of prohibition on June 9, 1986 leaving petitioner without any remedy, with respect to the criminal charges brought against him with no apparent probable cause being established. (copy of denial attached App A-1).

JURISDICTION

On June 9, 1986 the Ninth Circuit Court of Appeals denied petitioners petition for writ of prohibition. The jurisdiction of this court is invoked under Title 28 United States Code, Section 1254 (1). This court also has jurisdiction to issue the writ of prohibition \pursuant to Title 28 United States Code, Section 1651. 1/

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution Amendment IV,

> ...no warrants shall issue, but upon probable cause, supported by oath or affirmation...

United States Constitution Amendment V,

> ...nor be deprived of Life, Liberty, or Property, without due process of law;...

RULES OF CRIMINAL PROCEDURE INVOLVED

Rule 4(a) Federal Rules, Criminal Procedure,

> If it appears from the complaint, or from anaffidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it,...Upon the request of the attorney for the government a summons instead of a warrant shall issue.

Rule 5.1(a) Federal Rules, Criminal Procedure,

> If from the evidence it appears that there isprobable cause to believe that an offense has been committed and that the defendant has committed it, the federal magistrate shall forthwith hold him to answer in district court...The defendant may cross examine witnesses against him and may introduce evidence in his own behalf...

Petitioner was summoned to appear before magistrate Joseph Reichman, in the U.S District Court for fthe Central District of California, on April 28, 1986, to answer five unverified informations merely alleging that

the petitioner had received some form of gross income and had willfully and knowingly failed to file some form of return with respect to said gross income. (attached hereto App B-1 thru App B-7)

Upon petitioners appearance before Magistrate Reichman petitioner asked the Magistrate if he (the Magistrate) had an affidavit before him, the Magistrate clearly stated that he did not have an affidavit before him, the petitioner then made several demands for a probable cause hearing and was unequivocally told to "shut up" by the Magistrate, the Magistrate then ordered petitioner to appear forthwith before U.S District Judge Consuello B. Marshal.

Upon petitioners appearance before the Honorable Consuello B. Marshal the petitioner again demanded probable cause findings, Judge Marshal stated that the matter would have to be taken up later at a motions hearing, the petitioner lodged his objection and a

continuing objection, Judge Marshal then asked the petitioner to enter a plea, the petitioner respectfully refused to plea stating that he did not understand the nature of the charges, a plea of "not guilty" was then entered by the court against the petitioners will and over his objections. The court then ordered that the petitioner could not leave the courts geographical area without permission of the court, and also ordered petitioner to report on a frequent basis to the pre-trial services officer i.e quasi probation.

Petitioner seeing no other remedy available to him then submitted a petition for a writ of prohibition/mandamus to the Ninth Circuit court of Appeals on May 6, 1986 which was denied on June 9, 1986 with no reason given, giving rise to the necessity of having to seek this writ of certiorari before this court.

On June 17, 1986 the government motioned

up a status conference, the hearing was held before the Honorable Jesse W. Curtis U.S District Judge for the Central District of California, petitioner does not know why this case was transferred from Judge Marshal's court to Judge Curtis court, petitioner substantially refused to participate in the hearing.

REASONS FOR GRANTING THE WRIT

This court has condemned the practice of instituting criminal process without support of probable cause in Jaben v. United States, 381 U.S 214, 85 S. Ct. 1365 and again in Gerstein v. Pugh, 420 U.S 103, 95 S. Ct. 854 the Ninth Circuit court clearly stated that it must appear that probable cause exist whether a warrant or a summons is issued in United States v. Greenberg, 320 F.2d 467, however the Fifth Circuit has held in United States v. Millican, 600 F.2d 273, that the Fourth Amendment requires a judicial determination of probable cause, but the

Fifth Circuit also held that the denial of Millicans demands for a probable cause hearing would not be viewed as grounds for reversal after trial, therefore, if this petitioners petition for writ of prohibition is not granted this petitioner will suffer a substantial loss of rights secured by the United States Constitution and will be left with no remedy at law available to him. More fully set forth below.

The Fourth Amendment to the U.S Constitution requires probable cause for the support of any criminal action instituted by the government. Additionally, Rules 3 and 4 of the Federal Rules of Criminal Procedure, in conformity with the Fourth Amendment, also require probable cause to be shown in support of an information. Absent probable cause, no information or other criminal process can be instituted against an accused without his consent. The proper required procedure for the institution of criminal process is either

an indictment by a federal grand jury or a complaint or information supported by probable cause before issuance of any process to the accused.

In United States v. Greenberg, 320 F.2d 467 (9th Cir., 1963), the prosecution was commenced via a complaint wherein there was an attempt to establish probable cause via an affidavit made by a Special Agent of the Internal Revenue Service. The complaint was filed along with the supporting affidavit of probable cause shortly before the statute of limitations expired for the offense. Thereafter, but after the expiration of the statute of limitations, the defendant was indicted. The Ninth Circuit found that the affidavit did not establish probable cause, and thus could not be the basis for superseding indictment. since the indictment was not timely, it was dismissed. In this case, the Court plainly held:

"We conclude, under the rational of

> Giordenello that the requirement of Rule 4(a), that it must appear from the complaint that there is probable cause to believe that an offense has been committed and that the defendant has committed it, is required whether a warrant or summons is issued upon the complaint," 320 F.2d at 472.

In Jaben v. United States, 381 U.S 214, 85 S. Ct. 1365 (1965), the government filed a complaint against the accused, supported by an affidavit of probable cause, one day before the statute of limitations expired, the defendant wasindicted. Pursuant to statute, this procedure tolled the statute of limitations. Although the Court upheld in this case both the complaint supported by probable cause and the superseding indictment, the Court expressly held in referrence to a summons or arrest warrant as follows:

> "Neither is appropriate absent a judgment by the Commissioner that the complaint shows probable cause," 381 U.S., at 219.

Thus, in Jaben, the Supreme Court condemned the practice of instituting criminal process

without support of probable cause.

If Jaben does not conclusively resolve this issue, then Gerstein v. Pugh, 420 U.S 103, 95 S. Ct. 854 (1975), expressly does. Here, the question concerned state prosecutors who commenced criminal actions by information without a showing of probable cause, either before or after arrest. In finding this procedure unconstitutional, the Court stated:

> "Accordingly, we hold that the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest," 420 U.S., at 114.

In referrence to a prosecutor making a decision concerning probable cause for arrest and detention, the Court stated:

> "Although a conscientious decision that the evidence warrants prosecution affords a measure of protection against unfounded detention, we do not think prosecutorial judgment standing alone meets the requirements of the Fourth Amendment," 420 U.S., at 117.

Thus, Jaben requires at some stage of a

prosecution commenced by information a showing of probable cause; see also United States v. Millican, 600 F.2d 273 (5th Cir., 1979).

Rules 3 and 4 of the Federal Rules of Criminal Procedure require the showing of probable cause for the issuance of a summons. Rule 5(a) of the same Rules requires that a person brought to Court on a summons shall be proceeded against in accordance with Rule 5. The second paragraph under 5(c) dispenses with a preliminary examination when an information is filed. A preliminary examination can be used to determine probable cause, but no such examination occurs with the filing of an information.

What the prosecution seeks to achieve in this case is the filing of an unverified information which will preclude a preliminary examination. In this fashion, an attempt is being made to circumvent the requirement of probable cause. Then, in order for the

Petitioner to obtain any information concerning probable cause, the prosecution has gratuitously offered discovery under Rule 16, but this subjects the Petitioner to reciprocal discovery. Thus, the obvious reason that the information filed herein has no support of a showing of probable cause is to obtain discovery from the Petitioner. The prosecution cannot thus deny the petitioner a showing of probable cause to obtain discovery in this fashion.

The position of the petitioner is buttressed by the notes to Rule 4 of the Rules of Procedure for the Trial of Misdemeanors. These notes plainly state as follows:

> "A summons, on the other hand, may be issued only by a Magistrate, and only upon a showing of probable cause supported by oath... "If a summons could be issued on an information not supported by oath, and a warrant then issued for failure to appear in response to the summons, the end result would be that defendant could be arrested on warrant though there had never been a showing under oath of probable cause.

This is not permissible."

A summons was issued herein to the petitioner deficient of any showing of probable cause. This is plainly a deficient trial document required by Rule 2 of the Rules of Misdemeanor Trials. And the only remedy available to the petitioner is this writ of prohibition.

CONCLUSION

For the foregoing reasons petitioner (Rev.) Alan J. Stang respectfully requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit.

DATED: July 7, 1986 Respectfully Submitted

(Rev.) Alan J. Stang

(Rev.) Alan J. Stang
In Propria Persona
8385 Mandarin Ave.
Alta Loma, California 91701

IN

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

(Rev.) ALAN J. STANG,

PETITIONER,

v.

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA,

RESPONDENT.

UNITED STATES OF AMERICA,
Real Party In.Interest.

PROOF OF SERVICE

STATE OF CALIFORNIA)

) ss

COUNTY OF LOS ANGELES)

(Rev.) ALAN J. STANG, after being duly sworn, deposes and says that pursuant to Rule 28.4 (a) of this court he served the within PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE NINTH CIRCUIT on all parties of interest by enclosing a copy

thereof in an envelop, first class postage prepaid, addressed to:

Mark H. Bonner
Assistant U.S. Attorney
312 N. Spring St.
Los Angeles,
California 90012

Solicitor General of the
United States
Department of Justice
Washington, D.C. 20530

Joseph Reichman
U.S. District Magistrate,
Consuello B. Marshal
U.S. District Judge,
Jesse W. Curtis
U.S. District Judge,
312 N. Spring St.
Los Angeles, California 90012

and depositing same in the United States mails at Alta Loma, California, 21 June 1986

(Rev.) Alan J. Stang

(Rev.) Alan J. Stang, Affiant

Subscribed and sworn to before me
this 20th day of June 1986.

Evelyn M. Roberts

Notary Public in and for County of Orange
said County and State

OFFICIAL SEAL
EVELYN M. ROBERTS
Notary Public-California
Principal Office in
Orange County
My Comm. Exp. Aug. 10, 1989

APP A-1

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALAN J. STANG,	No. 86-7269
Petitioner,	DC# CR 86-314 CBM Central California
v.	ORDER
UNITED STATES DISTRICT COURT CENTRAL DISTRICT CALIFORNIA	
Respondent	
UNITED STATES OF AMERICA Real Party In Interest	

Before: SNEED, CANBY, and BEEZER, Circuit Judges.

The petition for writ of prohibition is denied.

APP-B-1

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA)	NO. 86-314
V.	
ALAN J. STANG	

To Alan J. Stang
8385 Mandarin Ave.
Alta Loma, CA 91701

You are hereby summoned to appear before the United States district Court for the Central District of California at the U.S Courthouse, 312 N. Spring St., in Courtroom no. G-19 Main St. level before the Honorable Joseph Reichman in the city of Los Angeles on the 28th day of April 1986 at 8:30 O'Clock A.M to answer to an information charging you with 26 U.S.C section 7203: Willful failure to file tax return.

DATED: April 11, 1986 Clerk U.S District Court

APP B-2

UNITED STATES DISTRICT COURT

FOR CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. ALAN J. STANG, Defendant.	No. 86-314 INFORMATION [26 U.S.C Sec.7203: Willful Failure to File Tax Return]

The United States Attorney charges:

COUNT ONE

[26 U.S.C Sec. 7203]

That during the calendar year 1979, defendant ALAN J. STANG, who was a resident of Alta Loma, California, had and received a gross income of $28,427; that by reason of such income he was required by law, following the close of the calendar year 1979 and on or before April 15, 1980, to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Los Angeles, in Los Angeles, within the Central District of California, or to the

Director, Internal Revenue Service Center, Western Region, Fresno, California, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that well knowing all the foregoing facts, he did knowingly and willfully fail to make said income tax return to the said District Director of Internal Revenue, to the said Director of the Internal Revenue Service Center, or to any other proper office of the United States, in violation of section 7203 Internal Revenue Code; 26 United States Code, Section 7203.

APP B-3

COUNT TWO

[26 U.S.C Sec. 7203]

That during the calendar year 1980, defendant ALAN J. STANG, who was a resident of Alta Loma, California, had and received a gross income of $23,216; that by reason of such income he was required by law, following the close of calendar year 1980 and on or before April 15, 1981, to make an income tax return to the District Director of the Internal Revenue for the Internal Revenue District of Los Angeles, in Los Angeles, within the Central District of California, or to the Director, Internal Revenue Service Center, Western Region, Fresno, California, stating specifically the items of gross income and any deductions to which he was entitled; that well knowing all the foregoing facts, he did willfully and knowingly fail to make said income tax return to the District Director of Internal Revenue, to the said Director of the Internal Revenue Service

Center, or to any other proper office of the United States, in violation of section 7203 Internal Revenue Code; 26 United States Code Section 7203.

APP B-4

COUNT THREE

[26 U.S.C Sec. 7203]

That during the calendar year 1981, defendant ALAN J. STANG, who was a resident of Alta Loma, California, had and received a gross income of $18,895; that by reason of such income he was required by law, following the close of calendar year 1981 and on or before April 15, 1982, to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Los Angeles, in Los Angeles, Central District of California, or to the Director, Internal Revenue Service Center, Western Region, Fresno, California, stating specifically the items of gross income and any deductions and credits to which he was entitled; that well knowing all the foregoing facts, he did willfully and knowingly fail to make said income tax return to the said District Director of Internal Revenue, to the said Director of the Internal Revenue Service

Center, or to any other proper office of the United States, in violation of Section 7203 Internal Revenue Code; 26 United States Code, Section 7203.

APP B-5

COUNT FOUR

[26 U.S.C Sec. 7203]

That during calendar year 1982, defendant ALAN J. STANG, who was a resident of Alta Loma, California, had and received a gross income of $19,939; that by reason of such income he was required by law, following the close of calendar year 1982 and on or before April 15, 1983, to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Los Angeles, in Los Angeles, within the Central District of California, or to the Director, Internal Revenue Service Center, Western Region, Fresno, California, stating specifically the items of gross income and any deductions and credits to which he was entitled; that well knowing all the foregoing facts, he did willfully and knowingly fail to make said income tax return to the said District Director of Internal Revenue, to the said Director of Internal Revenue Service

Center, or to any other proper office of the United States, in violation of Section 7203 Internal Revenue Code; 26 United States Code, Section 7203.

APP B-6

COUNT FIVE

[26 U.S.C Sec. 7203]

That during the calendar year 1983, defendant ALAN J. STANG, who was a resident of Alta Loma, California, had and received a gross income of $11,343; that by reason of such income he was required by law, following the close of the calendar year 1983 and on or before April 15, 1984, to make an income tax return to the District Director of Internal Revenue for the Internal Revenue district of Los Angeles, in Los Angeles, within the Central District of California, or to the Director, Internal Revenue Service Center, Western Region, Fresno, California, stating specifically the items of gross income and any deductions and credits to which he was entitled; that well knowing all the foregoing facts, he did knowingly and willfully fail to make said income tax return to the said District Director of Internal Revenue, to the said Director of Internal Revenue Service

Center, or to any other proper office of the United States, in violation of Section 7203 Internal Revenue Code; 26 United States Code, Section 7203.

ROBERT C. BONNER
United States Attorney

ROBERT L. BROSIO
Assistant United States Attorney
Chief, Criminal Division